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HHG 54928-7454-6/T-93-326

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of Freedom Enterprises,
Inc., d/b/a LaBelle Safety Storage &
Moving Co., Joint Petition for Transfer
of Household Goods Mover Permit Authority

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDED ORDER

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge from the State Office of Administrative Hearings, on April 21, 1994, in South St. Paul, Minnesota.

Appearances: Andrew R. Clark, Kalina, Wills, Wood, Gisvold & Clark, Attorneys at Law, 941 Hillwind Road NE, Suite 200, Minneapolis, Minnesota 55432, appeared on behalf of Freedom Enterprises, Inc., d/b/a LaBelle Safety Storage & Moving Co. (Transferor) and LaBelle Moving Corporation (Transferee); Robert Rarey, Regulatory Manager, 9445 East River Road, Minneapolis, Minnesota 55433, appeared on behalf of Gazda Transportation System, Inc. (Gazda); and Douglas M. Bester, Manager, 818 North Concord Street, South St. Paul, Minnesota 55075, appeared on behalf of Bester Brothers Transfer and Storage Company (Bester).

The record of the proceeding closed on April 21, 1994, at the conclusion of the hearing.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions which reply is made. Oral argument before a majority of the Board may be

permitted to all parties adversely affected by the Administrative Law Judge recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as final order.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the Transferee LaBelle Moving Corporation, has established the statutory prerequisite to a transfer of household good mover permit authority under Minn. Stat. § 221.11 (1992).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. LaBelle Moving Corporation is a Minnesota corporation which, as yet, currently exists only on paper. The Transferee, LaBelle Moving Corporation, is wholly owned by Raymond E. Andrews, Jr., who owns several businesses formed as Subchapter S corporations. Mr. Andrews owns a Subchapter S corporation known as Convention Exhibit Services. That corporation manufactures trade show exhibits. Mr. Andrews, in conjunction with Convention Exhibit Services, operates two vehicles, a straight truck and a van, with union drivers to move constructed exhibits to customers and trade shows.

2. The Subchapter S corporation, called Convention Exhibit Services, is owned 50 percent by Raymond E. Andrews, Jr., and 50 percent by William Dirks of Berger Transfer.

3. Mr. Andrews is also an owner of a Subchapter S corporation called Haas Display, located in Minneapolis, which is engaged in a business similar to that of Convention Exhibit Services. Mr. Dirks, of Berger Transfer, has a one-third interest in Haas. Mr. Dirks and Mr. Andrews are also in business in a Subchapter S corporation operating in Austin, Texas, called Mike Davis & Associates. Mr. Dirks has a one-third ownership interest in that business.

4. There is no legal relationship between LaBelle Moving Corporation and the Subchapter S corporations that Mr. Andrews and Mr. Dirks jointly own. Mr. Andrews will conduct the business of LaBelle Moving and Storage himself. He will not hire Mr. Dirks to assist in directing LaBelle Moving Corporation.

Nor, will there be any future legal relationships between LaBelle Moving Corporation and the Subchapter S corporations previously enumerated.

5. Mr. Andrews has not, as yet, placed any assets into LaBelle Moving Corporation. He intends, however, to use the equipment currently operated by Convention Exhibit Services to conduct the business of LaBelle Moving Corporation. If additional equipment is needed, it will be obtained.

6. Mr. Andrews has experience in the trucking business, having operated equipment to service Convention Equipment Services and through a past eight year association with Berger Transfer as sales manager.

7. Initially, LaBelle Moving Corporation will perform display moves for Haas, Convention Exhibit Services and customers of those two businesses who require trade show exhibits moved either to trade shows or back to company premises.

8. The personal financial statement of Raymond E. Andrews, Jr., shows assets in excess of \$1 million and minimal liabilities. Ex. 5. Mr. Andrews' net worth for purposes of his personal financial statement exceeds \$1 million.

9. Freedom Enterprises, Inc., d/b/a LaBelle Safety Storage & Moving Co. holds household goods moving authority within the state of Minnesota, represented by permit number 54928, as stated in Ex. 3, p. 2. In 1992 and 1993, LaBelle Safety Storage and Moving Co. actively exercised its authority as reflected in Ex. 3, throughout the territorial scope of the authority granted. The Minnesota intrastate moves made by LaBelle Safety Storage & Moving Co. in 1992 are stated in Ex. 1. The moves made by LaBelle Safety Storage & Moving Co. on an intrastate basis for the first six months of 1993 are stated in Ex. 2. LaBelle Safety Storage & Moving Co. is ceasing its Minnesota operations.

10. There is no written contract for the sale of the operating authority between the Transferor and the Transferee. Because the Transferor is ceasing to do business in the state and has sold its other assets to another carrier, it transferred its operating authority to the Transferee for the sum of \$3,000.00. Ex. 4.

11. There is no evidence in the record that Mr. Dirks will have an ownership interest in LaBelle Moving Corporation or that Berger Transfer will have any legal control over the operations of the Transferee.

12. Gazda is a full-service household goods mover that is owned by Mayflower, the parent company. Gazda is headquartered in Coon Rapids, Minnesota, where it maintains a 100,000 square foot facility. Gazda has Minnesota intrastate authority as a household goods mover, a local cartage carrier and a temperature controlled carrier. The company employs approximately 40 office persons and 60 persons in its moving activities. Its revenues in 1993 were approximately \$1.6 million and its operating revenues in 1992 were \$1.3 million. Gazda is concerned that Mr. Dirks' business association with Mr. Andrews will, in some manner, allow Berger Transfer to control the business operations of LaBelle Moving Corporation. Gazda is interested in having a level playing field for bidding on home and office moves and is concerned with any possibilities of possible collusive bidding or "behind the scenes" control by an apparent competitor.

13. Bester Brothers Transfer and Storage Co. is a full service household goods mover located in South St. Paul, Minnesota. Bester Brothers, like Gar, is concerned about the possible influence Berger Transfer may have upon LaB Moving Corporation because Mr. Andrews and Mr. Dirks are business associates of the Subchapter S corporations previously enumerated.

14. Neither Protestant contests that the authority of Freedom Enterprises, Inc., d/b/a LaBelle Safety Storage & Moving Co. has been actively exercised during the period preceding the sale prescribed by statute. Neither Protestant asserts that the purchase price is inappropriate. Neither

Protestant asserts that Mr. Andrews and his corporation, LaBelle Moving Corporation, will not be fit and able within the meaning of Rule 7800.0100, subp. 4.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and therefore, the matter is properly before the Administrative Law Judge.

3. From Transferee's experience, knowledge of the regulations and financial condition, the Judge concludes that he is fit and able within the meaning of Minn. Rule 7800.0100, Subp. 4.

4. Transferee's vehicles, being regularly maintained and free from defects, are within the safety requirements prescribed by the Department.

5. The authority sought to be transferred has been actively exercised for the requisite statutory period prior to the sale.

6. The purchase price, \$3,000.00, is reasonable given the value of the assets transferred.

7. The Protestants have failed to establish that they will be significantly harmed in their business operations by the transfer of the authority.

8. Any Conclusion more properly considered a Finding of Fact, and any Finding of Fact more properly considered a Conclusion, is hereby expressly adopted as such.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based on the foregoing Conclusions, it is the RECOMMENDATION of the Administrative Law Judge to the Board that it issue the following:

ORDER

The joint application of Freedom Enterprises, Inc., d/b/a LaBelle Safe Storage & Moving Co. (Transferor) and LaBelle Moving Corporation (Transferee) for the transfer of household goods moving permit No. 54928 from Transferor to Transferee is GRANTED.

Dated this 23rd day of May, 1994.

s/Bruce D. Campbell

BRUCE D. CAMPBELL
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to send its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape recorded; no transcript prepared.

MEMORANDUM

The Transferor and Transferee have clearly established the statutory requisites under Minn. Stat. § 221.151 (1992) for a transfer of household goods mover authority. Mr. Andrews is fit and able. The price paid for the sale of the permit is not disproportionate to the reasonable value of the permit. The operating authority sought to be transferred was actually exercised by the Transferor within the statutory period immediately preceding the transfer, as evidenced by relevant evidence.

The only concern expressed by the Protestants is the identity of the corporation that will control the Transferee. It is clear that Mr. Andrews had a prior relationship with Berger Transfer and has a current business association with a principle of Berger, Mr. Dirks. Mr. Andrews was employed as the Director of Sales for Berger for approximately eight years before he began his current business. Bester and Gazda believe that there is a possibility of control by Berger or collusive activity with LaBelle Moving Corporation. While the Protestants may, in their minds, have a reason to express reservations about the transaction, the personal and business relationship between Mr. Andrews and Mr. Dirks does not affect the validity of the transaction under Minn. Stat. § 221.151 (1992). The Board and the courts have applied a practical control test under the statute. Petition of Space Center Transportation, Inc., 444 N.W.2d 575 (Minn. App. 1989); Petition of Fritz Trucking, Inc., 407 N.W.2d 447 (Minn. App. 1987). Applying that test, Mr. Dirks has no actual or legal

control over Mr. Andrews or the operation of the Corporation. If Mr. Andrews or the Corporation engages in illegal collusive activity with either Mr. Dill or with Berger Transfer, appropriate complaint procedures exist. Such activities could be enjoined. The Administrative Law Judge, therefore, has legal basis in law to recommend that the transfer of the authority be denied.

BDC